

Application No. 09/266,202

REMARKS

Claims 1-5, 7-9 and 25-30 are pending. All of the pending claims stand rejected. Applicant respectfully requests reconsideration of the rejection based on the following comments.

The Examiner rejected claims 1-5, 7-9 and 25-30 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,699,035 to Ito et al. (Ito) in view of U.S. Patent 5,518,812 to Mitchnick et al. (Mitchnick). The Examiner asserted that Ito teaches the claimed invention except for the asserted particle size distribution. The Examiner cited Mitchnick for its teaching relating to particle size distributions. Applicant respectfully asserts that there have been misunderstandings regarding the cited references. Applicant respectfully requests reconsideration of the rejections based on the following comments.

With all due respect, Ito does not teach particle collections. Ito teaches zinc oxide "layers" with crystalline "grains." These are not particles under any reasonable reading of the term. See throughout Ito. In contrast, Ito discusses the **differences** with "powder" based devices. See column 1, lines 36-42 and column 2, lines 34-35 ("as compared to a grain diameter of greater than 10 μ m for large, powder application varistors." Powders comprise particles whereas fused layers do not comprise particles. Ito teaches directly forming their materials as a layer. See column 3, lines 33-40 and columns 5 and 6. While Ito uses the word "particle" at column 2, line 33, it is clearly just a term to reference the properties of the "small crystal grains" embedded within their layer. It is not even clear how the grain size is measured since it is described as being larger than the film thickness. See column 7, lines 38-40 ("... varister material having a film thickness ranging between 15 nm and 200 nm, and an average grain diameter of about 300 nm.") Since Ito does not teach particle collections as disclosed and claimed by Applicant, Ito is not relevant to the analysis of Applicant's claims for the purposes asserted by the Examiner.

Application No. 09/266,202

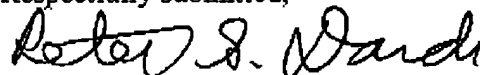
Furthermore, Mitchnick has several deficiencies with respect to Applicant's claimed invention. First, Mitchnick teaches amorphous material and not crystalline. See column 6, lines 11-12 ("The rods ... comprise X-ray amorphous material."). Also, the uniformity described at column 6, lines 19-23 is not at the same level of uniformity of Applicant's claimed powders. The vaguer reference to up to 90% uniform at column 6, lines 15-19 is not clear. However, based on the more specific description in the following sentence it is clear that the 90% description indicates that 10% of the rods are very different in size. Nevertheless, since the more specific description of uniformity is clearly deficient relative to Applicant's claimed uniformity, Mitchnick clearly falls short of describing Applicant's claimed invention and does not render Applicant's claimed invention *prima facie* obvious.

Based on the comments above, the combined teachings of Ito and Mitchnick clearly fall short of rendering Applicant's claimed invention *prima facie* obvious. Since the cited references alone or combined do not render the claimed invention obvious, Applicant respectfully requests withdrawal of the rejection of claims 1-5, 7-9 and 25-30 under 35 U.S.C. § 103(a) as being unpatentable over Ito in view of Mitchnick.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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